

May 6, 2008

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF NEW JERSEY

Civil Action No. 08-2068

---

In Regard to the Matter of:

Bayside State Prison

Litigation

JEROME WILLIAM YOUNG,

-vs-

WILLIAM H. FAUVER, et al,

Defendants.

---

\* \* \* \* \*

TUESDAY, MAY 6, 2008

\* \* \* \* \*

BEFORE THE HONORABLE JOHN W. BISSELL, SPECIAL MASTER

May 6, 2008

Page 2

1

2

Transcript of proceedings in the above

3

matter taken by Theresa O. Mastroianni, Certified

4

Court Reporter, license number 30X100085700, and

5

Notary Public of the State of New Jersey at the

6

United States District Court House, One Gerry Plaza,

7

Camden, New Jersey, 08102, commencing at 9:30 AM.

8

9

10

11

12

13

14

15

16

17

18

19

20

MASTROIANNI & FORMAROLI, INC.

Certified Court Reporting & Videoconferencing

21

251 South White Horse Pike

Audubon, New Jersey 08106

22

856-546-1100

23

24

25

May 6, 2008

Page 3

1 A P P E A R A N C E S:

2

3 PAUL J. HIRSH, PC  
10 MADISON AVENUE  
4 SUITE 300  
MORRISTOWN, NEW JERSEY 07960  
5 973-290-9555  
ATTORNEY FOR THE PLAINTIFFS

6

7

ROSELLI & GRIEGEL, PC  
8 BY: MARK ROSELLI, ESQUIRE

- and -

9 BY: STEVEN GRIEGEL, ESQUIRE

1337 STATE HIGHWAY 33  
10 HAMILTON SQUARE, NEW JERSEY 08690  
609-586-2257

11 ATTORNEYS FOR THE DEFENDANTS

12

13

14

15

16

17

18

19

20

21

22

23

24

25

May 6, 2008

Page 4

1 JUDGE BISSELL: Rule 52(c) of the  
2 Federal Rules of Civil Procedure provides, and I  
3 quote, "If during a trial without a jury a party has  
4 been fully heard on an issue and the court finds  
5 against the party on that issue, the court may enter  
6 judgment as a matter of law against that party with  
7 respect to a claim or defense that cannot under the  
8 controlling law can be maintained or defeated without  
9 a favorable finding on that issue, or may decline to  
10 render any judgment until the close of the evidence.  
11 Such judgment shall be supported by findings of fact  
12 and conclusions of law as required by subdivision (a)  
13 of this rule."

14 I find based upon the testimony of Mr.  
15 Young himself that he was directed after stripping to  
16 get underneath his bunk, obviously to be out of the  
17 way in connection with the processing of his bunk  
18 mate, who was on the top bunk. A scuffle ensued, at  
19 least what he could hear. He looked out. He was  
20 poked with the night stick in an area of his back and  
21 ribs, and told to stop eyeballing. Apparently this  
22 instruction had to be repeated once or twice more,  
23 because he did try to look around again. The hitting  
24 with the stick was, under the circumstances, neither  
25 excessive in terms of the force applied nor

May 6, 2008

Page 5

1 inappropriate, given the fact that it represented an  
2 appropriate corporal means of enforcing the  
3 discipline necessary in those close quarters in order  
4 to extract Mr. Young and his bunk mate from the cell.

5 Accordingly, upon being taken out from  
6 underneath his bunk and stood up, the Court  
7 determines that some measure of force could be  
8 applied against him by the officer for the purpose of  
9 reinforcing the need for discipline and compliance,  
10 since Mr. Young, at least from underneath the bed,  
11 had violated an order.

12 I realize that I have to measure and  
13 assess from the testimony of Mr. Young himself the  
14 nature of what occurred to him and the force applied.  
15 I find that it wasn't just a question of having the  
16 baton on the outside of the forearm placed against  
17 his back and having him pushed against the wall. He  
18 was struck in the back, and as a result thereafter,  
19 pushed against the wall by this officer for the  
20 purpose of reinforcing his authority and his need for  
21 control.

22 Under all the circumstances involved,  
23 including the events which led to this and the need  
24 for the orderly evacuation of the unit for the  
25 purposes of having them searched, I do not find that

May 6, 2008

Page 6

1 this was, indeed, excessive force under all the  
2 circumstances. I do not find it necessary in this  
3 decision to deal directly with the questions of  
4 de minimis injury or de minimis force. What I do  
5 determine is that under all the circumstances,  
6 excessive force, as defined by the jury instructions  
7 issued in prior cases which govern these matters, was  
8 not employed.

9               With regard to the injuries involved, I  
10 find no reason to contest Mr. Young that there has  
11 been some residual back injury as a result of this  
12 event. He has, however, made his own choices with  
13 regard to not taking either prescription or  
14 over-the-counter medication to rectify this  
15 condition, or even if more was needed, to have it  
16 X-rayed or otherwise treated. I don't call this any  
17 intervening cause for his continuing discomforts, by  
18 any means, but it also demonstrates, in my view, a  
19 rather modest severity overall.

20               I have revised this decision under  
21 Local Civil Rule 52.1. To reiterate, I make a  
22 determination under all the facts and circumstances  
23 before me here that the events which occurred to Mr.  
24 Young in this matter are not actionable as cruel and  
25 unusual punishment due to excessive force within the

May 6, 2008

Page 7

1 contemplation of the Eighth Amendment and the jury  
2 instructions which are based thereon. I recommend  
3 that the district court enter our order and judgment  
4 of no cause for action with regard to Jerome Young.

5 I would be remiss, however, at this  
6 point, and I would just like to take a moment to say  
7 this, even though it's not critical to the decision I  
8 have reached by any means, that Mr. Young, unlike,  
9 regrettably, many others who have testified before me  
10 in the last few months, has, it appears, put his  
11 criminal conduct behind him. And under the guidance  
12 of persons like the Browns, whose reputation hardly  
13 needs to be elaborated upon by me here, has  
14 apparently invoked his experiences to bring a  
15 substantial amount of good in areas where it is  
16 needed, namely the counseling of those with substance  
17 abuse problems.

18 Mr. Young, for reasons I hope I've  
19 articulated adequately, you did not prevail in this  
20 case.

21 On the other hand, I commend you for  
22 the course that your life has taken.

23 So this action -- I'll be recommending  
24 to Judge Kugler that no cause of action be  
25 established here.

May 6, 2008

Page 8

## C E R T I F I C A T E

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

I, Theresa O. Mastroianni, a Notary Public and  
Certified Shorthand Reporter of the State of New  
Jersey, do hereby certify that the foregoing is a  
true and accurate transcript of the testimony as  
taken stenographically by and before me at the time,  
place, and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a  
relative nor employee nor attorney nor counsel of any  
of the parties to this action, and that I am neither  
a relative nor employee of such attorney or counsel,  
and that I am not financially interested in the  
action.



Theresa O. Mastroianni, C.S.R.  
Notary Public, State of New Jersey  
My Commission Expires May 5, 2010  
Certificate No. XI0857  
Date: May 6, 2008



May 6, 2008

9

<p><b>A</b></p> <p>abuse 7:17</p> <p>accurate 8:6</p> <p>action 1:2 7:4,23 7:24 8:11,14</p> <p>actionable 6:24</p> <p>adequately 7:19</p> <p>al 1:8</p> <p>Amendment 7:1</p> <p>amount 7:15</p> <p>apparently 4:21 7:14</p> <p>appears 7:10</p> <p>applied 4:25 5:8 5:14</p> <p>appropriate 5:2</p> <p>area 4:20</p> <p>areas 7:15</p> <p>articulated 7:19</p> <p>assess 5:13</p> <p>attorney 3:5 8:10,12</p> <p><b>ATTORNEYS</b> 3:11</p> <p>Audubon 2:21</p> <p>authority 5:20</p> <p><b>AVENUE</b> 3:3</p>	<p>cannot under 4:7</p> <p>case 7:20</p> <p>cases 6:7</p> <p>cause 6:17 7:4 7:24</p> <p>cell 5:4</p> <p>Certificate 8:21</p> <p>Certified 2:3,20 8:4</p> <p>certify 8:5,9</p> <p>choices 6:12</p> <p>circumstances 4:24 5:22 6:2,5 6:22</p> <p>Civil 1:2 4:2 6:21</p> <p>claim 4:7</p> <p>close 4:10 5:3</p> <p>commencing 2:7</p> <p>commend 7:21</p> <p>Commission 8:20</p> <p>compliance 5:9</p> <p>conclusions 4:12</p> <p>condition 6:15</p> <p>conduct 7:11</p> <p>connection 4:17</p> <p>contemplation 7:1</p> <p>contest 6:10</p> <p>continuing 6:17</p> <p>control 5:21</p> <p>controlling 4:8</p> <p>corporal 5:2</p> <p>counsel 8:10,12</p> <p>counseling 7:16</p> <p>course 7:22</p> <p>court 1:1 2:4,6 2:20 4:4,5 5:6 7:3</p> <p>criminal 7:11</p> <p>critical 7:7</p> <p>cruel 6:24</p> <p>C.S.R 8:19</p>	<p>date 8:8,21</p> <p>deal 6:3</p> <p>decision 6:3,20 7:7</p> <p>decline 4:9</p> <p>defeated 4:8</p> <p>Defendants 1:9 3:11</p> <p>defense 4:7</p> <p>defined 6:6</p> <p>deminimis 6:4,4</p> <p>demonstrates 6:18</p> <p>determination 6:22</p> <p>determine 6:5</p> <p>determines 5:7</p> <p>directed 4:15</p> <p>directly 6:3</p> <p>discipline 5:3,9</p> <p>discomforts 6:17</p> <p>district 1:1,1 2:6 7:3</p> <p>due 6:25</p> <p><b>E</b></p> <p>E 3:1,1 8:1,1</p> <p>Eighth 7:1</p> <p>either 6:13</p> <p>elaborated 7:13</p> <p>employed 6:8</p> <p>employee 8:10 8:12</p> <p>enforcing 5:2</p> <p>ensued 4:18</p> <p>enter 4:5 7:3</p> <p>ESQUIRE 3:8,9</p> <p>established 7:25</p> <p>et 1:8</p> <p>evacuation 5:24</p> <p>event 6:12</p> <p>events 5:23 6:23</p> <p>evidence 4:10</p> <p>excessive 4:25 6:1,6,25</p> <p>experiences 7:14</p>	<p>Expires 8:20</p> <p>extract 5:4</p> <p>eyeballing 4:21</p> <p><b>F</b></p> <p>F 8:1</p> <p>fact 4:11 5:1</p> <p>facts 6:22</p> <p>FAUVER 1:8</p> <p>favorable 4:9</p> <p>Federal 4:2</p> <p>financially 8:13</p> <p>find 4:14 5:15 5:25 6:2,10</p> <p>finding 4:9</p> <p>findings 4:11</p> <p>finds 4:4</p> <p>force 4:25 5:7,14 6:1,4,6,25</p> <p>forearm 5:16</p> <p>foregoing 8:5</p> <p><b>FORMAROLI</b> 2:20</p> <p>forth 8:8</p> <p>fully 4:4</p> <p><b>FURTHER</b> 8:9</p> <p><b>G</b></p> <p>Gerry 2:6</p> <p>given 5:1</p> <p>good 7:15</p> <p>govern 6:7</p> <p>GRIEGEL 3:7,9</p> <p>guidance 7:11</p> <p><b>H</b></p> <p>H 1:8</p> <p><b>HAMILTON</b> 3:10</p> <p>hand 7:21</p> <p>hear 4:19</p> <p>heard 4:4</p> <p>hereinbefore 8:8</p> <p><b>HIGHWAY</b> 3:9</p> <p><b>HIRSH</b> 3:3</p> <p>hitting 4:23</p>	<p><b>HONORABLE</b> 1:17</p> <p>hope 7:18</p> <p>Horse 2:21</p> <p>House 2:6</p> <p><b>I</b></p> <p>inappropriate 5:1</p> <p>including 5:23</p> <p>injuries 6:9</p> <p>injury 6:4,11</p> <p>instruction 4:22</p> <p>instructions 6:6 7:2</p> <p>interested 8:13</p> <p>intervening 6:17</p> <p>invoked 7:14</p> <p>involved 5:22 6:9</p> <p>issue 4:4,5,9</p> <p>issued 6:7</p> <p><b>J</b></p> <p>J 3:3</p> <p>Jerome 1:6 7:4</p> <p>Jersey 1:1 2:5,7 2:21 3:4,10 8:5 8:20</p> <p><b>JOHN</b> 1:17</p> <p>Judge 4:1 7:24</p> <p>judgment 4:6,10 4:11 7:3</p> <p>jury 4:3 6:6 7:1</p> <p><b>K</b></p> <p>Kugler 7:24</p> <p><b>L</b></p> <p>law 4:6,8,12</p> <p>led 5:23</p> <p>license 2:4</p> <p>life 7:22</p> <p>Litigation 1:5</p> <p>Local 6:21</p> <p>look 4:23</p>
<p><b>B</b></p> <p>back 4:20 5:17 5:18 6:11</p> <p>based 4:14 7:2</p> <p>baton 5:16</p> <p>Bayside 1:4</p> <p>bed 5:10</p> <p>BISSELL 1:17 4:1</p> <p>bring 7:14</p> <p>Browns 7:12</p> <p>bunk 4:16,17,18 5:4,6</p> <p><b>C</b></p> <p>C 3:1 8:1,1</p> <p>call 6:16</p> <p>Camden 2:7</p>	<p><b>D</b></p>			

May 6, 2008

10

looked 4:19	officer 5:8,19	quote 4:3	State 1:4 2:5 3:9	unusual 6:25
<b>M</b>	once 4:22	<b>R</b>	8:4,20	<b>V</b>
MADISON 3:3	order 5:3,11 7:3	R 3:1 8:1	States 1:1 2:6	Videoconferenc...
maintained 4:8	orderly 5:24	reached 7:8	stenographica...	2:20
MARK 3:8	outside 5:16	realize 5:12	8:7	view 6:18
MASTER 1:17	overall 6:19	reason 6:10	STEVEN 3:9	violated 5:11
Mastroianni 2:3	over-the-coun... 6:14	reasons 7:18	stick 4:20,24	vs 1:7
2:20 8:3,19	<b>P</b>	recommend 7:2	stood 5:6	<b>W</b>
mate 4:18 5:4	P 3:1,1	recommending 7:23	stop 4:21	W 1:17
matter 1:3 2:3	parties 8:11	rectify 6:14	stripping 4:15	wall 5:17,19
4:6 6:24	party 4:3,5,6	regard 1:3 6:9	struck 5:18	wasn't 5:15
matters 6:7	PAUL 3:3	6:13 7:4	subdivision 4:12	way 4:17
means 5:2 6:18	PC 3:3,7	regrettably 7:9	substance 7:16	White 2:21
7:8	persons 7:12	reinforcing 5:9	substantial 7:15	WILLIAM 1:6
measure 5:7,12	Pike 2:21	5:20	SUITE 3:4	1:8
medication 6:14	place 8:8	reiterate 6:21	supported 4:11	<b>X</b>
modest 6:19	placed 5:16	relative 8:10,12	<b>T</b>	XI0857 8:21
moment 7:6	PLAINTIFFS	remiss 7:5	T 8:1,1	X-rayed 6:16
months 7:10	3:5	render 4:10	take 7:6	<b>Y</b>
MORRISTO... 3:4	Plaza 2:6	repeated 4:22	taken 2:3 5:5	Young 1:6 4:15
<b>N</b>	point 7:6	Reporter 2:4 8:4	7:22 8:7	5:4,10,13 6:10
N 3:1	poked 4:20	Reporting 2:20	terms 4:25	6:24 7:4,8,18
nature 5:14	prescription 6:13	represented 5:1	testified 7:9	<b>0</b>
necessary 5:3	prevail 7:19	reputation 7:12	testimony 4:14	07960 3:4
6:2	Prior 6:7	required 4:12	5:13 8:6	08-2068 1:2
need 5:9,20,23	Prison 1:4	residual 6:11	thereon 7:2	08102 2:7
needed 6:15	problems 7:17	respect 4:7	Theresa 2:3 8:3	08106 2:21
7:16	Procedurc 4:2	result 5:18 6:11	8:19	08690 3:10
needs 7:13	proceedings 2:2	revised 6:20	time 8:7	<b>1</b>
neither 4:24 8:9	processing 4:17	ribs 4:21	told 4:21	10 3:3
8:11	provides 4:2	ROSELLI 3:7,8	top 4:18	1337 3:9
New 1:1 2:5,7,21	Public 2:5 8:3,20	rule 4:1,13 6:21	transcript 2:2	<b>2</b>
3:4,10 8:4,20	punishment 6:25	Rules 4:2	8:6	2008 1:14 8:21
night 4:20	purpose 5:8,20	<b>S</b>	treated 6:16	2010 8:20
Notary 2:5 8:3	purposes 5:25	S 3:1	trial 4:3	251 2:21
8:20	pushed 5:17,19	scuffle 4:18	true 8:6	<b>3</b>
number 2:4	put 7:10	sought 5:25	try 4:23	30X100085700
<b>O</b>	<b>Q</b>	set 8:8	TUESDAY 1:14	2:4
O 2:3 8:3,19	quarters 5:3	severity 6:19	twice 4:22	300 3:4
obviously 4:16	question 5:15	Shorthand 8:4	<b>U</b>	
occurred 5:14	questions 6:3	South 2:21	underneath 4:16	
6:23		SPECIAL 1:17	5:6,10	
		SQUARE 3:10	unit 5:24	
			United 1:1 2:6	

May 6, 2008

11

33 3:9

5

5 8:20

52(c) 4:1

52.1 6:21

6

6 1:14 8:21

609-586-2257

3:10

8

856-546-1100

2:22

9

9:30 2:7

973-290-9555

3:5